

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Gregory Matthew Cleveland,	)	C/A No. 9:12-00001-TLW-BM
	)	
Petitioner,	)	
	)	
v.	)	Report and Recommendation
	)	
Barry Barnette, 7 <sup>th</sup> Circuit Court, Solicitor, Spartanburg,	)	
SC,	)	
	)	
Respondent.	)	
	)	

---

Gregory Matthew Cleveland (Petitioner), proceeding *pro se*, brings this action for habeas relief pursuant to 28 U.S.C. § 2241. Petitioner is a pretrial detainee at the Spartanburg County Detention Center, and files this action *in forma pauperis* under 28 U.S.C. § 1915.

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Petition filed in the above-captioned case pursuant to the procedural provisions of 28 U.S.C. § 1915, the Rules Governing Section 2254 Proceedings for the United States District Court,<sup>1</sup> the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4<sup>th</sup> Cir. 1995); *Todd v. Baskerville*, 712 F.2d 70 (4<sup>th</sup> Cir. 1983). Further, *pro se* petitions are held to a less stringent

---

<sup>1</sup> The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. See Rule 1(b).



standard than those drafted by attorneys, *see Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.1978), and a federal district court is charged with liberally construing a petition filed by a *pro se* litigant to allow the development of a potentially meritorious case. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Cruz v. Beto*, 405 U.S. 319 (1972); *see Fine v. City of New York*, 529 F.2d 70, 74 (2d Cir. 1975).

However, even when considered under this less stringent standard, the undersigned finds and concludes that the Petition submitted in the above-captioned case is subject to summary dismissal. The requirement of liberal construction does not mean that a court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

#### Background

Petitioner was arrested on March 1, 2011, as a result of an alleged “stand-off with officers” involving the possession and use of a firearm. ECF No. 1, page 1. Petitioner, who states that the possession of the firearm “occured [sic] prior to state crimes he is charged with,” argues that federal jurisdiction supercedes the jurisdiction of the state, and that federal authorities “must decide at present to either indict the Petitioner or otherwise release him.” *Id.* at 4-5. As the state allegedly lacks jurisdiction to detain and prosecute Petitioner because he is a convicted felon, *id.* at 3-4, the Petition seeks an “injunction halting/staying state process for the crimes charged by the state.” *Id.* at 6.

#### Discussion

Ordinarily, federal habeas corpus relief for a state prisoner is available only post-conviction. However, *pretrial* petitions for habeas corpus are properly brought under 28 U.S.C. § 2241, ““which applies to persons in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him.”” *United States v. Tootle*, 65 F.3d 381, 383 (4<sup>th</sup> Cir.

1995) (quoting *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5<sup>th</sup> Cir. 1987)). However, “an attempt to dismiss an indictment or otherwise prevent a prosecution”, as Petitioner attempts to do here, is generally not attainable through federal habeas corpus. *Dickerson v. Louisiana*, 816 F.2d at 226 (quoting *Brown v. Estelle*, 530 F.2d 1280 (5<sup>th</sup> Cir. 1976)). Specifically, federal habeas relief is available under § 2241 only if “special circumstances” justify the provision of federal review. *Dickerson*, 816 F.2d at 224-26. *See also Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 489-90 (1973). While “special circumstances” lacks any precise, technical meaning, courts have essentially looked to whether procedures exist which would protect a petitioner’s constitutional rights without pre-trial intervention. *Moore v. DeYoung*, 515 F.2d 437, 449 (3d Cir. 1975). Thus, where a threat to the petitioner’s rights may be remedied by an assertion of an appropriate defense in state court, no special circumstance is shown. *Id.*; *see, e.g., Drayton v. Hayes*, 589 F.2d 117, 121 (2d Cir. 1979) (double jeopardy claim entitled to pretrial habeas intervention because “the very constitutional right claimed ... would be violated” if petitioner were forced to go to trial). Where the right may be adequately preserved by orderly post-trial relief, special circumstances are likewise nonexistent. *Moore*, 515 F.2d at 449.

Additionally, in *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings “except in the most narrow and extraordinary of circumstances.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4<sup>th</sup> Cir. 1996). The *Younger* Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger*, 401 U.S. at 43-44 (citation omitted). From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: “(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate

opportunity to raise federal claims in the state proceedings.” *Martin Marietta Corp. v. Maryland Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4<sup>th</sup> Cir. 1994) (citing *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)). Petitioner alleges that he is currently detained on pending state criminal charges, thus satisfying the first prong of the abstention test. With respect to the second criteria, the Supreme Court has stated that “the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). Finally, in addressing the third criteria, the Court has noted “that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)).

Here, Petitioner can pursue his claims in state court both during and after trial, so he fails to demonstrate “special circumstances,” or to show that he has no adequate remedy at law and will suffer irreparable injury if denied the requested injunction halting state criminal proceedings. *See Younger*, 401 U.S. at 43-44; *Dickerson*, 816 F.2d at 226. Therefore, Petitioner is precluded from federal habeas relief at this time, and his Petition should be dismissed.<sup>2</sup>

---

<sup>2</sup> This Court also takes judicial notice that Petitioner has filed two previous cases in this Court seeking relief from the same state criminal charges discussed in the instant Petition. *See Cleveland v. Barnett, et al.*, C/A No. 7:11-3073-TLW-BM (D.S.C.)(§ 1983 complaint seeking injunction to halt the state court until the matter is heard in federal court); *Cleveland v. United States*, C/A No. 9:11-1335-TLW-BM (D.S.C.)(request for a writ of mandamus to direct the United States to indict Petitioner on federal criminal charges), *aff'd Cleveland v. United States*, No. 11-6990, 2011 WL 5024163 (4<sup>th</sup> Cir. Oct. 21, 2011). *See also Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4<sup>th</sup> Cir. 1989)(“We note that ‘the most frequent use of judicial notice is in noticing the content of court records.’”).

Recommendation

Accordingly, it is recommended that the Court dismiss the Petition *without prejudice*. The Petitioner's attention is directed to the important notice on the next page.



---

Bristow Marchant  
United States Magistrate Judge

January 18, 2012  
Charleston, South Carolina



### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

